

RESOLUTION NO. 2013-09

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH MICHAEL AND KATHLEEN STEVENSON, DEVELOPERS/OWNERS OF PROPERTY LOCATED AT 700 W. SR 89A IN SEDONA ARIZONA.

WHEREAS, the City of Sedona and Michael and Kathleen Stevenson, Developers/Owners of real property located at 700 W. SR 89A, desire to enter into a development agreement in connection with their development of the property as a restaurant; and

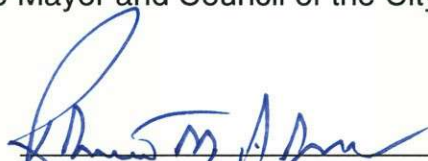
WHEREAS, the Development Agreement is deemed to be in the best interest of the City on the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT


The City of Sedona, through it Mayor and Council, hereby approves the Development Agreement with Michael and Kathleen Stevenson, the developers/owners of the real property locate at 700 W. SR 89A.

The Mayor is authorized to execute said agreement on behalf of the City of Sedona, Arizona.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 14th day of May, 2013.


Robert M. Adams, Mayor

Attest:


Susan L. Irvine, City Clerk

Approved as to Form:


Mike Goimarac, City Attorney

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

**MICHAEL GOIMARAC, CITY ATTORNEY
CITY OF SEDONA, ATTORNEYS' OFFICE
102 ROADRUNNER DRIVE
SEDONA, ARIZONA 86336**

**MARIPOSA
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the date last signed below by and between the CITY OF SEDONA, Coconino County, Arizona ("City"); and MICHAEL J. STEVENSON and KATHLEEN M. STEVENSON, husband and wife, ("Developer").

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located within the City.

B. Developer owns the real property that is located at 700 W. State Route 89A, Sedona, Arizona designated as Tax Parcel Numbers 401-46-124-A and 401-46-124-B and more fully described on **Exhibit "A"** attached hereto (the "Property"), and referred to as the Mariposa Development.

C. A.R.S. 9-500.05 requires that a development agreement shall be consistent with a municipality's general plan or specific plan, if any, applicable to the property on the date the development agreement is executed. This Development Agreement is consistent with the Sedona Community Plan.

D. The Property is currently zoned as OP (Office Professional District). The City acknowledges that the Developer can redevelop the property in accordance with presently existing regulations.

E. Developer has requested that the City rezone the Property from its current zoning of OP (Office Professional District) to C-1 (General Commercial District) zoning so that Developer may establish a restaurant on the Property and/or use the Property for other C-1 Zoning District uses in the future that are specifically listed in Section 4 of this Agreement. The

Developer desires to address the goals expressed in the Community Plan and Special Planning Area in order to enhance the compatibility of this development proposal with the surrounding area. To this end, it is recognized that various other permitted and conditional uses within a C-1 Commercial zone may not be compatible with the goals and visions of the Community Plan as previously set forth. In order to insure that such uses will not become part of any current or future development of the Property, the Developer is willing to enter into this Agreement and thereby voluntarily limit the uses of the property to those that are listed in Section 4 below.

F. The Parties anticipate that rezoning the Property to C-1 with limited uses and the initial use of the Property as a restaurant will result in the following community benefits: 1) preservation of view corridors; 2) preservation of natural vegetation and open space; 3) restriction of future land uses as provided in this Agreement which are more compatible with the goals of the Community Plan; 4) economic benefits in the form of increased sales tax revenue; 5) aesthetic site and building improvements; 6) provision of a designated vista overlook area with parking; 7) provision of a Painter's Point area; 8) provision of an internal trail system; 9) dark sky friendly exterior lighting that exceeds the current outdoor lighting regulation; 10) minimization of traffic impacts; and 11) improved compatibility with the surrounding area. The Developer shall continue to have the right to control access to the Property and the use of the vista overlook area with parking, Painter's Point area and internal trail system in the Developer's sole discretion to control misuse or public nuisance. Moreover, the provisions for a vista overlook, Painter's Point and internal trail system are not a public dedication of these areas.

AGREEMENT

1. **Current Development Plans.** At the present time, Developer plans to remodel the existing building on the Property for use as a restaurant and meeting rooms. The construction to remodel the building shall all be done at one time and not in phases. The estimated completion time for the project is thirty-six (36) months after the rezoning of the Property is completed.

2. **Proposition 207 Waiver.** Developer agrees to sign a Proposition 207 Waiver as a separate document in a form acceptable to the Parties. This waiver will preclude any claims under the Private Property Rights Protection Act, specifically ARS 12-1134 and ARS 9-500.12, as to the zoning change to a commercial C-1 Zoning District and the voluntary restrictions of future uses as set forth below.

3. **Property Access.** The Arizona Department of Transportation ("ADOT") has jurisdiction over this portion of State Route 89A. The current driveways have been reviewed by ADOT and found to be in compliance with their policies and standards. The Parties agree to meet and confer in the future if any ADOT issues arise regarding access to and from State Route 89A and the Property and agree to explore possible solutions.

4. **Land Use Restrictions.** In order to insure more fully that the goals and aspirations of the Community Plan and Special Planning Area are met by the proposed development and with any

future developments of the Property, the Parties agree that the Property is restricted to the following uses, including those designated only by issuance of a conditional use (CU) permit:

From the “Permitted Uses and Structures” of SLDC 620.02.A

Please Note: Chronological numbers below do not reflect current numbers listed in the Sedona Land Development Code.

1. Accessory uses and structures located on the same site as a permitted use.
2. Administrative and executive offices.
3. Apparel stores.
4. Barber and beauty shops including a day spa.
5. Bed and breakfast establishments subject to the following: Max 6 guest units, same regulations for Hotels and Motels. Primary access to guest rooms from main entrance.
6. Books, gifts and stationery stores.
7. Candy stores and confectioneries.
8. Catering establishments
9. Clerical and professional offices.
10. Commercial art galleries.
11. Convalescent homes.
12. Dancing, art, music and business schools
13. Financial institutions.
14. Jewelry stores.
15. Medical, dental and related health services, including laboratories, clinics and massage therapy/healing arts uses).
16. Private clubs and lodges operated solely for the benefit of the bona fide members.
17. Public and private libraries and museums.
18. Religious institutions, columbariums and places of worship in permanent buildings.
19. Restaurants and outdoor seating areas, including sale of alcoholic beverages.
20. Retail bakeries which may include baking and confection making for on-site sale only.
21. Single-family and multi-family residential uses in conjunction with commercial uses (limited to first story).
22. Travel agencies.
23. Variety stores.

From the “Uses Subject to Conditional Use Permit” of SLDC 620.02.B

1. Accessory uses and structure located on the same site as a conditional use.
2. Non-profit fund raising activities that are not conducted within permanent structures and occur on a more frequent basis than provided for under SLDC 407 are subject to the conditional use permit provisions of SLDC 402.

Developer agrees to refrain from developing now or any time in the future any use not listed above, unless mutually agreed upon by the Parties and/or their successors in interest at some future date.

While the Parties understand that it is the Developer's current desire and intention to construct a premier restaurant that will hopefully become a longstanding business, the Parties also understand and agree that should the property be rezoned to "C-1 General Commercial" as limited by this Agreement, the Developer shall have the right and discretion to change the use of the Property at any time in the future from a restaurant to any of the remaining C-1 zone uses permitted above. The Parties further understand that a change in the use of the Property in the future could change the benefits from the current proposal.

At the present time, the US Forest Service does not desire access to the Coconino National Forest because such access is not on the Forest Service's Priority Program List and therefore not being considered. In the event the US Forest Service desires access to the Coconino National Forest in the future, Developer will consider the possibility of allowing such access from the Property.

5. Termination of Agreement. If the Property is not rezoned to "C-1 General Commercial", within 30 days of execution of this Agreement by both Parties, this Agreement becomes null and void and is terminated.

6. Successors and Assigns. All of the provisions of this Agreement shall run with the land and inure to the benefit of and be binding upon the heirs, successors and assigns of the respective Parties to this Agreement pursuant to A.R.S. § 9-500-05(D), and all successor owners or developers of any portion of the Property.

7. Notice. Any notice or demand that the Parties are required or may desire to serve upon others, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City:

Tim Ernster, City Manager
City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336

With a copy to:

Michael Goimarac, City Attorney
City of Sedona, Attorneys' Office
102 Roadrunner Drive
Sedona, Arizona 86336

If to Developer:

Michael J. Stevenson
Kathleen M. Stevenson
P.O. Box 4142
Sedona, AZ 86340

With a copy to:

Rob Pecharich, Esq.
Donald C. Zavala, Jr., Esq.
Boyle, Pecharich, Cline, Whittington & Stallings, PLLC
125 N. Granite Street
Prescott, Arizona 86301

8. Miscellaneous.

8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no official or employee of the City shall have any personal interest, direct or indirect, in this Agreement. Nor shall any such official or employee participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is interested directly or indirectly. This Agreement is subject to cancellation for conflict of interest as provided in A.R.S. § 38-511.

8.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

8.3 Headings. The descriptive sections of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

8.4 Authority. Developer represents to the City that, by entering into this Agreement, it has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

8.5 Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all of any portion of the Property, only with the mutual written consent of the City and all then-current fee title owners of the Property. The City shall record the amendment or cancellation in the Coconino County Property Records.

8.6 Severability. If any provision of the Agreement is declared void or unenforceable, the Parties agree promptly to meet to attempt to reach an agreement on a substitute provision. If the Parties fail to reach a decision, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided such severance does not vitiate the overall intent of the Parties in entering into this Agreement.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior written and oral matters related to this Agreement. This provision applies only to this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

8.8 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that, notwithstanding A.R.S. § 12-408, venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Coconino County, Arizona, and the Parties hereby waive any right to object to such venue.

8.9. Recording of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Coconino County Recorder no later than ten (10) days after the agreement becomes effective as required by A.R.S. § 9-500.05.D.

8.10 Attorneys Fees and Costs. In the event that either Party hereto shall commence any civil action against the other to enforce or terminate this Agreement or to recover damages for the breach of any provisions, covenants or terms of this Agreement on the part of the other Party to be kept or performed, the prevailing Party in such civil action shall be entitled to recover from the other Party, in addition to any other relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection with such litigation.

8.11 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement other than as provided herein.

8.12 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

8.13 Effective Date. This Agreement shall be first executed by the Developer, and then submitted to the City Council for approval via the approving Resolution, Per ARS § 9-

500.05.G, the decision by the City Council to approve the development agreement is not effective for at least thirty (30) days to provide for the referendum period of ARS § 19-142.

8.14 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Coconino County, Arizona to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

8.15 Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Developer or successor, or under any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of which shall be deemed an original, as of the date and year show below.

CITY OF SEDONA

By: _____

Robert M. Adams, Mayor

Date

DEVELOPER

By: _____

Michael J. Stevenson

Date

By: _____

Kathleen M. Stevenson

Date

Approved as to form:

City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL NO. 1:

That part of Section 7, Township 17 North, Range 6 East of the Gila and Salt River Base and meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northwest corner of Lot 6 and said Section 7;

THENCE South 39 degrees 01 minutes 28 seconds East, a distance of 308.47 feet to the Northerly right of way line of U.S. Highway 89-A, as delineated on the plat of ROLLING HILLS ESTATES, recorded in Case 2 Map 216, records of Coconino County, Arizona;

THENCE South 51 degrees 08 minutes 23 seconds West, along the said North right of way line, a distance of 255.96 feet to a point on the West line of said Lot 6, Section 7;

THENCE North 00 degrees 43 minutes 39 seconds East, along said West line, a distance of 400.27 feet to the POINT OF BEGINNING.

PARCEL NO.2:

That part of Section 7, Township 17 North, Range 6 East of the Gila and Salt River Base and meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northwest corner of Lot 6 and said Section 7;

THENCE South 00 degrees 43 minutes 39 seconds West, along the West line of Lot 6, a distance of 400.27 feet to the Northerly right of way line of U.S. Highway 89-A, as delineated on the plat of ROLLING HILLS ESTATES, recorded in Case 2 Map 216, records of Coconino County, Arizona;

THENCE Northeasterly, along said Northerly right of way line to the North line of the South half of the Northeast quarter of the Southwest quarter of Section 7;

Thence West, along said North line and the North line of Lot 6, a distance of 500.43 feet to the POINT OF BEGINNING;

EXCEPTING THEREFROM the following described parcel;

That part of Section 7, Township 17 North, Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northwest corner of Lot 6 of said Section 7;

THENCE South 39 degrees 01 minutes 28 seconds East, a distance of 308.47 feet to the Northerly right of way line of U.S. Highway 89-A, as delineated on the plat of ROLLING HILLS ESTATES, recorded in Case 2 Map 216, records of Coconino County, Arizona;

THENCE south 51 degrees 08 minutes 23 seconds West, along the said North right of way line, a distance of 255.96 feet to a point on the West line of said Lot 6, of said Section 7;

THENCE North 00 degrees 43 minutes 39 seconds East, along said West line, a distance of 400.27 feet to the POINT OF BEGINNING.